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 10 YELP! INC.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 CATS AND DOGS ANIMAL
 15 HOSPITAL, INC., et al., on behalf of
 16 itself and all others similarly situated,

17 Plaintiffs,

18 v.

19 YELP! INC.,

20 Defendant.

Case No. CV 10-01340 VBF(SSx)

**DEFENDANT YELP! INC.'S REPLY IN
 SUPPORT OF MOTION TO
 CONSOLIDATE RELATED CASES FOR
 ALL PURPOSES AND TO SET
 SCHEDULE FOR FILING
 CONSOLIDATED AMENDED
 COMPLAINT**

Date: Monday, May 10, 2010
 Time: 1:30 p.m.
 Judge: Hon. Valerie Baker Fairbank

22 CHRISTINE LaPAUSKY d/b/a
 23 D'AMES DAY SPA, on behalf of
 herself and all others similarly situated,

24 Plaintiffs,

25 v.

26 YELP! INC.,

27 Defendant.

Case No. CV 10-01578 VBF (SSx)

1 **I. ARGUMENT**

2 Yelp has tried since the first call between its counsel and opposing counsel,
3 on March 10, to reach an agreement on consolidation without the need for motion
4 practice. Counsel for the *Cats and Dogs* Plaintiffs originally opposed
5 consolidation, and it was not until the eve of Yelp’s filing of a motion that Plaintiffs
6 said they agreed to consolidation. Yet, even then, they continued to oppose the
7 filing of a consolidated amended complaint. (Yelp Mot. at 5:14–7:2.) The
8 alternative proposals the *Cats and Dogs* Plaintiffs have made fail to address Yelp’s
9 articulated concerns and fail to provide the recognized benefits of a consolidated
10 amended complaint.

11 By contrast, Plaintiff LaPausky’s then-counsel, Mr. Marron, agreed from the
12 beginning that the most appropriate course was to have the cases consolidated and
13 to have all plaintiffs file a consolidated amended complaint. (Yelp Mot. at 5:21-
14 26.) Yelp and LaPausky entered a stipulation setting forth that agreement, which
15 was filed with this Court. (*Id.*; see also Declaration of Matthew D. Brown in
16 Support of Yelp Mot., Ex. B.)

17 Now that counsel for the *Cats and Dogs* Plaintiffs have replaced Mr. Marron
18 as counsel for LaPausky, it appears (though they have not directly addressed the
19 issue) that they are disavowing part of that stipulation. LaPausky had previously
20 stipulated that a consolidated amended complaint should be filed, yet now the filing
21 on behalf of all plaintiffs takes the position that such a consolidated complaint is
22 “needless[.]” (Pltfs’ “Non-Opposition” at 1:15-16) and suggests that Yelp’s
23 motivation is “to needlessly delay the proceedings” (*id.* at 2:2-4). It is ironic now
24 to hear Plaintiffs accuse Yelp of being “dilatory” and “wast[ing] the Court’s time.”
25 (*Id.* at 1:1-3, 1:20-24.)

26 Although Plaintiffs’ filing is styled a “non-opposition” to Yelp’s motion, it
27 is, at most, a partial non-opposition (and a partial opposition). In their filing,
28 Plaintiffs first say they agree that the *Cats and Dogs* and *LaPausky* cases should be

1 “consolidated for all purposes.” (Pltfs’ “Non-Opposition” at 1:11-14.) But then
2 they go on to say that the *LaPausky* case should be stayed. (*Id.* at 1:16-19, 2:5-10.)
3 As far as we can tell, the net effect of what Plaintiffs propose here is not truly
4 consolidation for all purposes, but is, in reality, a proposal that the *Cats and Dogs*
5 case be litigated while the *LaPausky* case is stayed. This is precisely what Yelp is
6 trying to avoid. Yelp wants to make sure that both cases are litigated and resolved
7 in an efficient and consistent manner, and believes that the approach that provides
8 all parties and the Court with the most clarity is a consolidated amended complaint.

9 Plaintiffs make the rather odd statement that if the Court were to order them
10 to file a consolidated and superseding amended complaint, “all plaintiffs will do is
11 refile the [*Cats and Dogs*] FAC [First Amended Complaint] exactly as it is now,
12 except with the phrase ‘Consolidated Complaint’ on its cover.” (Pltfs’ “Non-
13 Opposition” at 1:20-24; *see also id.* at 1:25 (referring to “renamed but identical
14 complaint”).) That is obviously not what Yelp is requesting. The consolidated and
15 superseding complaint should include all 11 named plaintiffs in both the *Cats and*
16 *Dogs* and *LaPausky* cases, and should also include plaintiff-specific allegations for
17 all named plaintiffs. Proceeding with the *Cats and Dogs* complaint as it stands
18 now, but calling it the “consolidated” complaint, would not incorporate all plaintiffs
19 and their claims and allegations into the litigation, nor would it provide clarity on
20 exactly what claims and allegations are being pressed against Yelp. (*See also* Yelp
21 Mot. at 11:3-19 (citing authorities discussing advantages of consolidated
22 complaint).)

23 As discussed in Yelp’s papers in support of its motion to transfer the *Cats*
24 *and Dogs* and *LaPausky* cases to the Northern District of California, there is also a
25 third related case against Yelp which is pending in the Northern District (*Boris Y.*
26 *Levitt v. Yelp! Inc.*, No. CGC-10-497777). Yelp’s view is that all three cases
27 should be consolidated and that the most appropriate venue is the Northern District.
28 The plaintiff in the Northern District case, *Levitt*, has said that he will stipulate to

1 the consolidation of all three cases if *Cats and Dogs* and *LaPausky* are transferred
2 to the Northern District. (Declaration of Matthew D. Brown in Support of
3 Defendant Yelp! Inc.'s Reply in Support of Motion to Transfer Venue (28 U.S.C.
4 § 1404(a)), filed Apr. 26, 2010, ¶¶ 2-4.)

5 **II. CONCLUSION**

6 For the reasons set forth herein and in Yelp's moving papers, Yelp
7 respectfully requests that this motion be granted.

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9 Dated: April 26, 2010 COOLEY LLP

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11

/s/ Matthew D. Brown
Matthew D. Brown (196972)
Attorneys for Defendant
YELP! INC.

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